IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4147 OF 2006

Gopikishan Badrinarayan Baheti & Ors. ...Applicants

vs.

Parshwanath Nagri Sahkari Pat Sanstha Ltd. and another ...Respondents

Mr.Prashant Kulkarni for the Applicant
Mr.S.V.More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 28,2006.

P.C.:

1. The first prayer in this Application is for challenging the order issuing process in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. In view of the law laid down by this court in case of V.K.Jain and others vs. Pratap Padode and another [2005 (3) Mh.L.J. page 778), a remedy of filing a Revision Application for challenging the order issuing process is available to the Applicant. Therefore, this Application is not entertained in so far as prayer (a) is concerned.

2. In prayer clause (c), the Applicants have claimed permanent exemption. My attention has been invited to the order dated 17th October 2006 passed by the learned Judicial Magistrate (First Class) below application at Exh.76. By the said order, Application for permanent exemption has been rejected by the Trial Court. In my view, prayer for permanent

exemption made by the Applicants will require reconsideration in accordance with law considering the fact that the private complaint is filed under section 138 of the Negotiable Instruments Act, 1881, and the Applicants have been arraigned as accused on the ground that they are the Directors of the Accused No.1 which is a cooperative society. In a complaint urder section 138 of the said Act of 1881, the Court cannot be rigid while considering the application for exemption unless peculiar conduct of an accused warrants strict view to be taken.

3. Notwithstanding the rejection of the Application at Exh.76, it will be open for the Applicants to make a fresh Application before the Trial Court for grant of permanent exemption. If such application is made, the learned Trial Judge will decide the same afresh without being influenced by the order dated 17th October 2006 passed below the Application at Exh.76.

4. Subject to what is stated above, Application is rejected.

5. All contentions of the parties on merits of the pending complaint are expressly kept open.

JUDGE